

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

ALLAN RODGERS,)
individually, AND)
)
GREGORY ALLAN RODGERS,)
individually, AND)
)
RAYMOND D'SEAN FRANKLIN,)
individually, AND)
)
ROBERT DEWAYNE FRANKLIN,)
individually)
Plaintiffs,)
)
vs.)
)
DANIEL K. KNIGHT, in his)
official and individual capacity,)
AND)
)
BRIAN LIEBHART, in his official and)
individual capacity, AND)
)
THOMAS QUINTANA, in his official)
and individual capacity, AND)
)
LLOYD SIMONS, in his official and)
individual capacity, AND)
)
MARK BROTEMARKLE, in his official)
and individual capacity, AND)
)
MIKE VALLEY, in his official and)
individual capacity, AND)
)
KYLE LUCAS, in his official and)
individual capacity, AND)
)
GEOFFREY JONES , in his official and)
individual capacity, AND)
)
KENNETH M. BURTON, in his official)
and individual capacity, AND)
)

Case No.: _____

Jury Trial Demanded

CASSANDRA ROGERS, in her official)
and individual capacity, AND)
)
RICHARD HICKS, in his official and)
individual capacity, and)
)
CITY OF COLUMBIA)
State of Missouri, and)
)
BOONE COUNTY, a political)
subdivision of the State of Missouri)
)
Defendants.)

COMPLAINT

COME NOW Plaintiffs, by and through their undersigned counsel, and in support of their Complaint against the Defendants, state as follows:

1. Plaintiff ALLAN RODGERS is a citizen of the state of Missouri and a resident of Boone County, Missouri, and is married to Joan Rodgers, and was at all times pertinent to this litigation.

2. Plaintiff GREGORY ALLAN RODGERS is a citizen of the state of Missouri and a resident of Boone County, Missouri, and was at all times pertinent to this litigation.

3. Plaintiff RAYMOND D'SEAN FRANKLIN, is an African-American and is a citizen of the state of Missouri, and is currently a resident of Boone County, Missouri, and was at some of the times pertinent to this litigation. Prior to returning as a citizen of the state of Missouri, and when some of the events related

to this litigation occurred, Raymond Franklin was a resident and citizen of Wake County, North Carolina.

4. Plaintiff ROBERT DEWAYNE FRANKLIN is an African-American and was a resident of Boone County, Missouri when significant events related to this litigation occurred and is currently a resident of Logan County, Oklahoma.

5. Defendants KENNETH M. BURTON, LLOYD SIMONS, THOMAS QUINTANA, MIKE VALLEY, MARK BROTEMARKLE, KYLE LUCAS, GEOFFREY JONES and BRIAN LIEBHART are citizens of the state of Missouri and, at all times pertinent to this litigation, were police officers employed by the City of Columbia, Missouri.

6. Defendant DANIEL K. KNIGHT is a citizen of the state of Missouri and, at all times pertinent to this litigation, the elected Boone County Prosecutor.

7. Defendant CASSANDRA ROGERS is a citizen of the state of Missouri and, at all times pertinent to this litigation, employed as an Assistant Boone County Prosecutor.

8. Defendant RICHARD HICKS is a citizen of the state of Missouri and, at all times pertinent to this litigation, employed as an Assistant Boone County Prosecutor.

9. Defendant CITY of COLUMBIA is a municipal corporation of a local government located in the state of Missouri, and a political subdivision of the State of Missouri, and has waived its right to assert sovereign immunity by obtaining liability insurance pursuant to RSMo. 537.610 and/or RSMo. 71.185 (2000)¹.

¹ All references to RSMo. are to RSMO (2000) unless otherwise noted.

10. Defendant BOONE COUNTY is a local county government and a political subdivision located in the state of Missouri, and has waived its right to assert sovereign immunity by obtaining liability insurance pursuant to RSMo. 537.610 and/or RSMo. 71.185.

11. This Court has personal jurisdiction over all parties in this litigation. Therefore, this Court's jurisdiction is proper pursuant to the First, Second, Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and the Missouri Constitution Article I, Section 23 and Missouri law.

12. Claims in this litigation are brought pursuant to 42 U.S.C. Section(s) 1981, 1982 and 1983 and Missouri law. Therefore, this Court has subject matter jurisdiction pursuant to 28 U.S.C. Section(s) 1331 and 28 U.S.C 1367 and Missouri law.

13. A substantial part of the events giving rise to this claim occurred in Boone County, Missouri. Therefore, venue is proper with this Court located in the Western District of the United States District Court of Missouri pursuant to 42 U.S.C. Section 1391 (b).

Facts Common to All Counts

14. At all times pertinent to this litigation, Defendants KENNETH M. BURTON, LLOYD SIMONS, THOMAS QUINTANA, GEOFFREY JONES, KYLE LUCAS, MIKE VALLEY, MARK BROTEMARKLE and BRIAN LIEBHART acted under the color of state law as police officers and were employed by the City of Columbia, Missouri.

15. At all times pertinent to this litigation, Defendants DANIEL K. KNIGHT, RICHARD HICKS and CASSANDRA ROGERS acted under the color of state law as county prosecutors and were employed by the county government of Boone County, Missouri.

16. All actions and omissions of Defendants KENNETH M. BURTON, LLOYD SIMONS, BRIAN LIEBHART, THOMAS QUINTANA, MARK BROTEMARKLE, KYLE LUCAS, MIKE VALLEY, GEOFFREY JONES and DANIEL K. KNIGHT, RICHARD HICKS and CASSANDRA ROGERS, as described below, arose out of and were performed in connection with their official duties as law enforcement officers.

17. At all times pertinent to this litigation, Defendants KENNETH M. BURTON, LLOYD SIMONS, THOMAS QUINTANA, KYLE LUCAS, MIKE VALLEY, GEOFFREY JONES and BRIAN LIEBHART and the CITY of COLUMBIA, Missouri acted under the color of state law.

18. At all times pertinent to this litigation, Defendants DANIEL K. KNIGHT, RICHARD HICKS and CASSANDRA ROGERS and the county government of BOONE COUNTY, Missouri acted under the color of state law.

19. On or about December 15, 2008, Columbia Police Officer Geoffrey Jones seized at least ten firearms, including shotguns, rifles and pistols located in Plaintiff Robert Franklin's residence at 1670 Sonora Drive, in the City of Columbia, Missouri, in Boone County, after Officer Jones assisted in the arrest William "Billy" Rogers outside of Robert Franklin's residence. Officer Jones

purported to have a warrant authorizing the search and seizure, but did not present the warrant to Robert Franklin and/or leave a copy of the warrant at Robert Franklin's residence.

20. During the search of Robert Franklin's residence a 45 caliber Vulcan pistol, Serial Number F10691, legally owned by Robert Franklin, was found in a locked room in proximity to items of mail with Robert Franklin's son, Plaintiff Raymond D'Sean Franklin's, name on them. Robert Franklin had obtained a permit for the acquisition of a concealable firearm No. 07-20452 from the Boone County Sheriff on February 21, 2007, which was used to purchase this firearm from the Paris Road Family Pawn on February 22, 2007.

21. On September 10, 2007, Raymond D'Sean Franklin pled guilty to the felony of possession of a controlled substance and was given a four year sentence. The sentence was suspended, and Raymond Franklin was placed on supervised probation for a period of five years. Raymond Franklin had his probation supervision transferred to the state of North Carolina in September 2008, and relocated there immediately. Raymond Franklin was residing in North Carolina on December 15, 2008.

22. On June 30, 2010, Boone County Prosecutor Daniel K. Knight acted with his First Assistant Prosecutor Richard Hicks to file a felony complaint against Raymond D'Sean Franklin, in Case No 10BA-CR02981, alleging that, as a felon, Raymond Franklin unlawfully possessed Robert Franklin's legally owned firearm by having mail with his name on it in a locked room under the control of his father

in proximity to his father's firearm. A fifty thousand (\$50,000) dollar bond was set with the arrest warrant issued for Raymond Franklin on this allegation.

23. Raymond and Robert Franklin were forced to pay five thousand (\$5,000) dollars to a bondsman to post the bond and incurred an additional forty-five hundred dollars (\$4,500) in legal fees to defend this malicious prosecution. Daniel K. Knight and Richard Hicks resisted motions to dismiss for lack of any evidence of possession of this firearm by Raymond Franklin and pursued this matter through preliminary hearing and subsequently to jury trial settings.

24. Raymond Franklin's probation was revoked citing this alleged violation of Missouri law as a basis for the revocation, his sentence in the 2007 drug charge was imposed, and he was incarcerated in the Missouri Department of Corrections.

25. For the purpose of delaying Raymond Franklin's parole consideration, Daniel K. Knight and Richard Hicks delayed the resolution of the weapons case. Even after a speedy trial motion had been filed by Raymond Franklin, Richard Hicks additionally sought a continuance(s) purportedly for the purpose of obtaining lab tests to tie Raymond Franklin to his father's lawfully owned firearm. Said continuance(s) were granted over objection, even though no tests exist that could distinguish if Raymond Franklin had touched the firearm between the period of his father's acquisition on February 22, 2007 and his felony conviction on September 10, 2007, or thereafter. Therefore these alleged tests would have had no probative value - a fact which Richard Hicks was aware of and had received subsequent communication regarding from Raymond Franklin's defense counsel. Even after

this communication Richard Hicks sought additional continuances for these lab tests. These continuance requests were made to intentionally delay the trial setting and impede Raymond Franklin's eligibility for parole while the pending felony charge existed.

26. On April 21, 2011, Richard Hicks, after being denied an additional continuance of the jury trial, filed Nolle Prosequi dismissing the illegal possession of a firearm charge against Raymond Franklin. Subsequently Raymond Franklin was granted parole on the 2007 drug charge and released from prison

27. Repeated requests were made to the Columbia Police Department to return Robert Franklin's property seized on December 15, 2008, The Columbia Police Department stated they could not release the property without the authorization of Daniel K. Knight, the Boone County Prosecuting attorney, or a subordinate in his office.

28. Repeated requests were made to Daniel K. Knight at his office to authorize the Columbia Police Department to release Robert Franklin's property. Responding on his behalf Mr. Knight's subordinate investigative staff said any release of the weapons would have to be delayed for months time and again. Until agreement was had to release his property on August 23, 2012, when the Columbia Police Department released: A 20 gauge (Ga.) Shotgun; a Westernfield 12 Ga shotgun; a 30.06 rifle; a Maverick 12 Ga. Shotgun; a Sears 12 Ga. Shotgun; a 7.65 rifle; a Henry Arms 12 Ga. Shotgun; a highpoint 40 caliber pistol; a Taurus 9 MM pistol and other property to an authorized agent of Robert Franklin.

29. On January 28, 2011, Plaintiff Gregory Allan Rodgers was forced to take evasive action to avoid a traffic accident at the same intersection where he had had a severe collision resulting in injuries years before. After avoiding this accident Gregory Rodgers communicated with the other driver his concerns about the other driver's excessive speed and running the stop sign. Gregory Rodgers thereafter called 911 seeking police assistance after being assaulted by a male bystander and informed the dispatcher he had a C.C.W. Permit and had firearms.

30. City of Columbia police officers Mike Valley, Mark Brotemarkle, and Kyle Lucas responded to the scene of the incident.

31. Officer Valley admonished Gregory Rodgers for communicating with the driver, and advised Gregory Rodgers that if the other driver had felt threatened by his communication Gregory Rodgers would have been arrested. Officer Brotemarkle asked for Gregory Rodger's drivers' license. Gregory Rodgers presented his license and his valid concealed carry (C.C.W.) permit issued by the State of Florida as well.

32. Officer Valley inquired about the C.C.W. permit arguing that Gregory Rodgers should not have had a C.C.W. permit stating "I thought we got you ruled a dangerous person. I thought you were not supposed to have guns."

33. Gregory Rodgers requested that the man who had assaulted him be arrested, but the police officers refused. Officer Valley stated to Gregory Rodgers that they were done and Officer Brotemarkle returned Gregory Rodgers' drivers' license and CCW permit.

34. Gregory Rodgers turned to leave and was getting back into his vehicle when Officer Brotemarkle assaulted him from behind. Officer Kyle Lucas claimed that Gregory Rodgers' CD case in his car appeared to be a gun justifying the assault.

35. On January 28, 2011, a few minutes after the incident with officers Brotemarkle and Lucas, Gregory Rodgers called the Columbia Police Department to speak with the direct supervisor of these officers. Gregory Rodgers spoke with officer Sergeant Daniel Beckman and informed him about what had happened and complained about the conduct of these officers. Gregory Rodgers initiated a complaint with the Columbia Police Department about the actions of these officers and the matter was referred to Sergeant Lloyd Simons of the internal affairs section for investigation.

36. Gregory Rodgers had to seek medical treatment on January 29, 2011 and February 08, 2011, and thereafter, for injuries inflicted upon him on January 28, 2011, by Officer Brotemarkle, including cervical and thoracic strain and dysfunctions.

37. Gregory Rodgers was involved in a traffic collision on May 11, 2011, was issued a ticket by Columbia Police Department officers and a court date was set in municipal court on the matter. Gregory Rodgers was denied a continuance on that setting, and a warrant was ordered for his failure to appear on July 18, 2011, with a five hundred (\$500) dollar bond.

38. In early August 2011, when Gregory Rodgers was discussing his complaint against Columbia Police Department Officers Brotemarkle, Lucas and Valley with

Sergeant Lloyd Simons, Mr. Rodgers informed Sergeant Simons that he had become aware of the municipal warrant and would be taking care of it in the near future.

39. In retaliation for Gregory Rodgers' exercise of his First Amendment right "to petition the government for a redress of grievances" through his complaint against Officers Brotemarkle, Lucas and Valley, Sergeant Simons alleged that Gregory Rodgers intended to resist arrest. Sergeant Simons alleged to other Columbia police officers that Gregory Rodgers was dangerous and intended to resist arrest. This allegation was such that it could have been used to provide a justification for the use of lethal force in retaliation for Plaintiff Greg Rodgers' complaint against the Columbia Police Department officers.

40. On August 12, 2011, Columbia Municipal Court Judge Robert Aulgur authorized the enforcement of the Warrant in MU6M11-3900 MT – the traffic case against Gregory Rodgers for which he had missed his first court date in July 2011. The Court's record, paragraph #3, states "The court has been informed by the Columbia, Missouri Police Department that the defendant made threats of physical violence against judges presiding over divisions of the Thirteenth Judicial Circuit for the State of Missouri, an attorney who appears before those judges, and police officers who may attempt to serve the court's outstanding warrant for arrest." The order provided notice to Gregory Rodgers to appear at 8:30 A.M. On August 19, 2011, unless brought before the court before then.

41. The court file in this matter had a Dr.'s note from Larry Scroggins, M.D. Dated 07/14/2011, requesting the court grant an "excuse" for Gregory Rodgers form his court date due to evaluation and treatment for "chest pain" in the emergency department. That request for a continuance was not granted by the municipal court.

42. On August 12, 2011, Officer Geoffrey Jones, while undercover and pretending to be looking for a lost dog outside Gregory Rodgers' residence, at approximately 8:46 P.M. made contact with Gregory Rodgers.

43. While speaking to Officer Jones, Gregory Rodgers noticed a marked Columbia Police Department patrol car occupied by Officer Thomas Quintana and Officer Moroney heading towards his location. At that time, Gregory Rodgers declared his intent to return to his residence and began trotting towards his home. Officer Jones, from behind Gregory Rodgers, then yelled "Police, Stop". Gregory Rodgers immediately stopped, dropped a screw driver and wire-cutter and then dropped his pistol to his side away from his body and assumed the prone position, informing Officer Geoffrey Jones behind him that "he gave up" and he was not now armed. Gregory Rodgers was taken into custody. Gregory Rodgers informed Officers Jones and Quintana that his valid Florida C.C.W. permit was inside his residence.

44. Officer Quintana prepared a sworn probable cause statement alleging that Gregory Rodgers was illegally carrying a concealed firearm, a C Felony under RSMo. 571.030. Officer Quintana noted that Gregory Rodgers' Missouri C.C.W.

permit had expired on October 20, 2007, but made no reference to the valid C.C.W. permit issued by the state of Florida to Gregory Rodgers that is granted reciprocity under Missouri law.

45. The Boone County Prosecutor's Office submitted a bond Memo to the on-call Judge requesting that bond for this charge be set at fifty thousand (\$50,000) dollars. The bond Memo included allegations that Gregory Rodgers "has threatened law enforcement", "the Defendant ran from officers" and "The Defendant possessed a concealed weapon illegally". Subsequently Judge Kevin Crane set the bond on these charges at fifty thousand (\$50,000) with the special condition "not possess any weapons".

46. Officer Brian Liebhart prepared a sworn warrant affidavit, in which he recited anonymous "Crimestopper calls" on August 09, 2011 and August 12, 2011, in which the anonymous caller stated that Gregory Rodgers had "armor piercing bullets and will open fire on the police if they attempt to arrest him. ... armed with an M-16, ... intends to blow up the Columbia Police Department." and "... has expressed a desire to kill the Judge and the police if there is an attempt to arrest him." The illegal activity alleged as the justification for the warrant was "unlawful possession of a firearm".

47. While the warrant affidavit was being prepared, Gregory Rodgers was under arrest for the municipal warrant and about to be arrested for what had occurred during the arrest on that municipal warrant for the felony of carrying unlawfully

on his person a concealed firearm under RSMo 571.030.1(1), notwithstanding his valid concealed carry permit issued by the state of Florida.

48. On or about August 12, 2011, Gregory Rodgers was arrested on a municipal court warrant for failure to appear on a traffic matter by the Columbia Police Department. Despite Gregory Rodgers being the holder of a valid concealed carry permit, issued by the State of Florida, he was charged with unlawful possession of a firearm. Gregory Rodgers posted bond on both the Municipal matter and the new charge of illegally concealing a firearm on his person and was released from custody after being held in custody from Friday, August 12, 2011, until Monday, August 15, 2011.

49. After the arrest of Gregory Rodgers on August 12, 2011, Columbia Police Officer Brian Liebhart, executed a warrant affidavit alleging it was “unlawful possession of a firearm” if firearms and/or ammunition were owned or possessed by Gregory Rodgers. Officer Liebhart cited anonymous “Crimestopper” report(s) made on August 09, 2011 and August 12, 2011 from an unknown informant with no history of having previously provided reliable information as the principal basis of his affidavit. In addition, he cited Columbia Police Sergeant Lloyd Simons, as indicating that Gregory Rodgers would resist the arrest recently completed related to the Municipal Warrant.

50. The Honorable Judge Kevin Crane, despite no legally relevant basis to find sufficient evidence to issue this warrant for the allegation of “unlawful possession of a firearm” and/or that Gregory Rodgers was not legally entitled to possess his

firearms and ammunition, did in fact approve and authorize this warrant for the search and seizure of firearms and ammunition at “*1607 Windsor Street, Apartment 8*” with no limitation to either a specific city or state under the warrants authorization.

51. On or about the early morning hours of August 13, 2012, Columbia Police Officer Brian Liebhart, assisted by other members of the Columbia Police Department executed this warrant at Gregory Rodgers’ residence located at 1607 Windsor Street, Apartment 8, Columbia, MO 65201, and outside the warrant’s authorization searched other property located nearby and seized items there from, including a 12 gauge (ga) Beretta, 3 Kel Tec 32 pistols , Remington 87 12 ga., Remington 12 ga, an AR-15, Weatherby Mark VI 33 MAG Bolt Action, Marlin 22 Bolt Action, JC Higgins 20 Ga, and assorted magazines and ammunition

52. Prior to August 11, 2011, Gregory Rodgers had filed complaints against various Columbia police officers for misconduct and had been interviewed by Columbia Police Department Internal Affairs Sergeant Lloyd Simons.

53. Defendant Kenneth M. Burton was at all times pertinent to this matter the Chief of the Columbia, Missouri Police Department and supervised Officers Brian Liebhart, Thomas Quintana, Geoffrey Jones, Kyle Lucas, Mike Valley and Sgt. Lloyd Simons as his subordinate officers.

54. Plaintiffs Gregory Allan Rodgers and Allan Rodgers made repeated requests to Defendants jointly and/or separately for the return of their wrongfully seized and detained firearms and/or other property for over a year, which were refused by the

Defendants. Several items listed above were returned to Allan Rodgers on September 21, 2012, and several other items were returned to Gregory Rodgers on October 22, 2012, but Defendants maintained possession of 9 mm pistol belonging to Greg Rodgers seized when he was arrested on the municipal warrant, and

55. Defendant City of Columbia illegally seized and detained several lawfully owned firearms belonging to Plaintiff Robert Dewayne Franklin on or about December 15, 2008, including a Vulcan V10.45 handgun, that was found in proximity to personal correspondence addressed to Plaintiff Raymond D'Sean Franklin, his son, who was a convicted felon and who was by the authority of Defendant Daniel K. Knight, Boone County Prosecutor, charged with the felony of unlawful possession of a firearm in cause # 10BA-CR02981.

56. Defendant City of Columbia Police Department conspired with Defendant Daniel K. Knight and his subordinate prosecutors to deny Robert Dewayne Franklin the return of his lawfully owned firearms, and, at least through August 20, 2012, refused to return any of Robert Franklin's lawfully owned guns to his possession.

57. Defendant City of Columbia has a pattern and practice of targeting those critical of police conduct with retaliatory action. Matthew Akins was targeted with a "**wanted poster**" displayed at the Columbia Police Department. Matthew Akins operates Citizens for Justice and was targeted for unjustified police attention because of his exercise of his First Amendment right to report Columbia police

officers activities and petition his government for the redress of grievances related to their conduct, and

58. Plaintiff Gregory Rodgers was targeted with retaliatory action for his exercise of First Amendment speech rights and filing complaint(s) against Columbia police officers alleging misconduct as guaranteed by his First Amendment right to petition his government, the City of Columbia, for the redress of grievances.

59. Due to the acts and/or omissions of the Defendants, the Plaintiff(s) have incurred medical and/or counseling expenses.

60. Due to the acts and/or omissions of Defendants and/or unknown Columbia police officers defamatory allegations were conveyed to Plaintiff Gregory Rodgers' landlord which impaired and/or undermined their business relationship.

61. Due to the acts and/or omissions of the Defendants, the Plaintiff(s) have incurred monetary loss.

62. Due to the acts and/or omissions of the Defendants, the Plaintiff(s) have been deprived of the use of their personal property.

63. Due to the acts and/or omissions of the Defendants, the Plaintiffs Allan Rodgers and Gregory Allan Rodgers have endured loss of enjoyment of life, loss of sleep, symptoms of post-traumatic stress, inconvenience, personal humiliation, nervousness and suffering, fear, hyper-vigilance, pain and suffering, mental anguish, and emotional damages and attorney fees in excess of the amount of eleven thousand (\$11,000) dollars.

64. Due to the acts and/or omissions of the Defendants, the Plaintiffs Robert Franklin and Raymond D'Sean Franklin have endured loss of enjoyment of life, loss of sleep, symptoms of post-traumatic stress, inconvenience, personal humiliation, nervousness and suffering, fear, hyper-vigilance, pain and suffering, mental anguish, and emotional damages and attorney fees and bond fees in the amount of eleven thousand-five hundred (\$11,500) dollars.

65. Defendant City of Columbia, either by affirmative acts or omissions, had in place policies, practices, procedures and/or guidelines that violated or led to the violation of the Constitutional rights of Gregory Allan Rodgers and/or Allan Rodgers.

66. Defendant City of Columbia, either by affirmative acts or omissions, had in place policies, practices, procedures and/or guidelines that violated or led to the violation of the Constitutional rights of Robert Franklin and/or Raymond D'Sean Franklin.

67. Defendant Boone County, Missouri, either by affirmative acts or omissions, had in place policies, practices, procedures and/or guidelines that violated or lead to the violation of the Constitutional rights of Gregory Allan Rodgers and/or Allan Rodgers.

68. Defendant Boone County, Missouri, either by affirmative acts or omissions, had in place policies, practices, procedures and/or guidelines that violated or lead to the violation of the Constitutional rights of Robert Franklin and/or Raymond D'Sean Franklin.

69. Color of State Law

Defendants were all acting under color of State law during all times set out herein, specifically at the times the Federal and State Constitutional rights of the Plaintiffs were violated. Since the allegations in the various counts which follow relate to one another, Plaintiffs incorporate into each respective count the contents of the allegations in the other respective counts.

70. Deprivations and Violations of Rights

Due to the acts and/or omissions of the Defendants, the Plaintiffs seek damages for committing acts under color of law, which deprived Plaintiffs of rights secured under the Constitutions and laws of the United States and of the State of Missouri, to wit:

- a. For committing such acts in violation of those Constitutions and laws; and
- b. For violating the customs and usages of the State of Missouri; and
- c. For violating the rights, privileges and immunities secured to them by the Constitutions and laws of the United States and the State of Missouri; and
- d. For violating the rights to security of person and freedom from unreasonable search and seizure and arrest and excessive force and malicious prosecutions as guaranteed by the First, Second, Fourth, Fifth, Sixth and Fourteenth Amendments to the Constitution of the United States and similar provisions of the Missouri State Constitution; and
- e. For violating the rights not to be deprived of life, liberty and the pursuit of happiness without due process of law- both as to procedural due process and

substantive due process- as well as their right to access the courts for fair litigation, all as guaranteed by the First, Second, Fourth, Fifth, Sixth and Fourteenth Amendments to the United States Constitution and similar provisions of the Missouri Constitution; and

- f. For violating the due process and/or equal protection of the law and equal privileges under the law, guaranteed by the Fourteenth Amendment to the United States Constitution and similar provisions of the Missouri State Constitution; and
- g. For violating the property rights of gun owners as guaranteed by the Second and Fourth Amendments to the United States Constitution and similar provisions of the Missouri State Constitution; and
- h. For refusing or neglecting to prevent such deprivations and denials to the Plaintiffs; and
- i. For using excessive force upon Plaintiffs in violation of their Constitutional rights; and
- j. For their wrongful, intentional, reckless and/or negligent conduct.

71. Defendants and/or the City of Columbia are further liable for their failures to train, instruct, supervise, control and discipline the individual law enforcement officers on a continuing basis, to wit:

- a. Said failures were the result of official policy and/or the customs, practices, usages of the defendant government entities.
- b. Said failures were the result of the deliberate indifference of the policy makers toward the rights of the citizens and Plaintiffs involved herein.

72. Defendant Police Officers are further liable for their failures to take the opportunity presented to intercede on the behalf of the Plaintiffs and prevent other defendants from subjecting the Plaintiffs to the use of excessive force and an unlawful and unreasonable seizure of their persons and/or property as well as an unlawful search of their home in violation of the laws and Constitutions of the United States and the State of Missouri.

73. Defendants and/or the County Government of Boone County, Missouri are further liable for their failures to train, instruct, supervise, control and discipline the individual law enforcement officers on a continuing basis, to wit:

- a. Said failures were the result of official policy and/or the customs, practices, usages of the defendant government entities.
- b. Said failures were the result of the deliberate indifference of the policy makers toward the rights of the citizens and Plaintiffs involved herein.

74. Joint Venture, Joint and Several Liability and Conspiracy

a. Defendants acted together in a joint venture, were joint tortfeasors, and are jointly and severally liable to Plaintiffs. Plaintiffs allege that the actions of the Defendants described herein were the actions of persons conspiring together, all being conspirators engaged in a scheme and conspiracy to deny and to deprive plaintiffs of rights guaranteed to them under the Constitution and laws of the United States and of Missouri and particularly those enumerated in this Complaint. The conspiracy included, but was not limited to, the use of excessive force and the unlawful detention and restraint of personal freedom and unlawful seizure and

detention of property. The defendants combined and acted in concert by way of an agreement to inflict wrongs against/ injuries upon the plaintiffs. Their agreement also included the covering up of their acts of police abuse described herein.

b. The purpose of conspiring was to deprive, either directly or indirectly, plaintiffs of the equal protection of the laws and equal privileges and immunities under the laws and their Constitutional rights.

c. The defendants acted in furtherance of the object of the conspiracy by making their various police reports and taking the enumerated actions against Plaintiffs.

d. Plaintiffs were injured in their persons and deprived of having and exercising their rights and privileges as a citizen of the United States and of Missouri, all as set forth herein.

e. The conspiracy extended to the completing and filing of false and misleading law enforcement reports after the events at issue so as to justify actions that were taken and so as to create an appearance that was not in accordance with the actual facts that took place.

f. The conspiracy extended to extending legally frivolous criminal proceedings to force Plaintiffs to appear in court and deny their liberty to move unimpeded by government control or oversight.

g. The conspiracy extended to extending legally frivolous criminal proceedings for the reason of denying and/or negatively impacting parole consideration by keeping a frivolous criminal allegation pending and continuing a matter set for a speedy

trial to have the time to conduct completely irrelevant lab tests. Tests that were never conducted to plaintiffs knowledge.

75. Exemplary Damages

All the acts of the defendants were willful, wanton, reckless, malicious, and further show a complete and deliberate indifference to, and conscious disregard for the safety and rights of plaintiffs. Therefore, plaintiffs are entitled to an award of exemplary damages, at least against the individual Defendants acting in their individual capacities.

**Count I – Violation of Plaintiff GREGORY ALLAN RODGERS
Constitutional Rights – Defendants Liebhart, Simons, Quintana, Burton,
Brotemarkle, Jones, Lucas, Valley, Knight, Rogers, the City of Columbia and
the County Government of Boone County, Missouri**

76. Plaintiff GREGORY ALLAN RODGERS hereby reincorporates and restates paragraphs 1 through 75 into this Count I as though fully set forth herein.

77. Defendants named in Count I by their acts and/or omissions did violate Plaintiff GREGORY ALLAN RODGERS's Constitutional right to be free from unreasonable searches and seizures and/or the security of his person as provided by the Second and/or Fourth Amendment of the United States Constitution.

78. Defendants named in Count I by their acts and/or omissions did violate Plaintiff GREGORY ALLAN RODGERS's Constitutional right to free speech and/or to petition the Government for the redress of grievances and retaliated against him for his exercise of same in violation of his rights.

79. Defendants named in Count I by their acts and/or omissions did violate Plaintiff GREGORY ALLAN RODGERS's Constitutional right to privacy and property and to keep and bear arms.

80. Each of the rights described above are clearly established Constitutional rights.

81. As a direct and proximate result of the actions of Defendants in violating the rights of the Plaintiff GREGORY ALLAN RODGERS, he suffered the previously mentioned injuries and damages.

WHEREFORE, Plaintiff GREGORY ALLAN RODGERS prays this Court enter a judgment in his favor and against the Defendants named in Count I holding Defendants liable for the injuries and damages suffered by Plaintiff. Plaintiff further prays that this Court order Defendants to pay Plaintiff such sums as to fully and completely compensate him for the injuries and damages he has suffered as previously outlined and for pre-judgment interest in an amount in excess of \$1,075,000.00. (One million and seventy-five thousand dollars) Plaintiff further prays that this Court order Defendants to pay punitive damages to Plaintiff as Defendants' conduct is outrageous and exhibits conscious disregard and reckless indifference for the rights and safety of others. Plaintiff further prays for an award of Attorney's fees as allowed by 42 U.S.C. Section 1988. Plaintiffs pray for all other relief that this Court deems reasonable and just.

Count II – Violation of Plaintiff ALLAN RODGERS' Constitutional Rights – Defendants Liebhart, Burton, Knight, Rogers, the City of Columbia and the County Government of Boone County, Missouri

82. Plaintiff ALLAN RODGERS hereby reincorporates and restates paragraphs 1 through 81 into this Count II as though fully set forth herein.

83. Defendants named in Count II by their acts and/or omissions did violate Plaintiff ALLAN RODGERS's Constitutional right to be free from wrongful seizure of his property as provided by Second and/or Fourth Amendment of the United States Constitution.

84. Defendants named in Count II by their acts and/or omissions did violate Plaintiff ALLAN RODGERS's Constitutional right to be free from unreasonable seizures as provided by the Fourth Amendment of the United States Constitution.

85. Defendants named in Count II by their acts and/or omissions did violate ALLAN RODGERS's Constitutional right to be free from unreasonable searches as provided by the Fourth Amendment of the United States Constitution and to keep and bear arms as provided by the Second Amendment of the United States Constitution.

86. Defendants named in Count II by their acts and/or omissions did violate Plaintiff ALLAN RODGERS's Constitutional right to liberty and/or the due process and/or equal protection of law as provided by the Fifth and Fourteenth Amendments of the United States Constitution.

87. Defendants named in Count II by their acts and/or omissions did violate Plaintiff ALLAN RODGERS's Constitutional right to privacy and property as provided by the Second and/or Fourth Amendments to the U.S. Constitution.

88. Each of the rights described above are clearly established Constitutional rights.

89. As a direct and proximate result of the actions of Defendants in violating the rights of the Plaintiff ALLAN RODGERS's suffered the previously-mentioned injuries and damages and additionally suffered the Loss of consortium and support of his wife due to the conduct of defendants named above.

90. In addition, Plaintiff ALLAN RODGERS's suffered loss of appetite and significant weight loss due to the emotional impact of the above named defendants misconduct, and

WHEREFORE, Plaintiff prays this Court enter a judgment in his favor and against the Defendants named in Count II holding Defendants liable for the injuries and damages suffered by Plaintiff. Plaintiff further prays that this Court order Defendants to pay Plaintiff such sums as to fully and completely compensate him for the injuries and damages he has suffered as previously outlined and for pre-judgment interest in excess of \$610,000.00. (Six hundred and ten thousand dollars) Plaintiff further prays that this Court order Defendants to pay punitive damages to Plaintiff as Defendants' conduct is outrageous and exhibits conscious disregard and reckless indifference for the rights and safety of others. Plaintiff further prays for an award of Attorney's fees as allowed by 42 U.S.C. Section 1988. Plaintiff does pray for all other relief that this Court deems just.

Count III – Violation of Plaintiff RAYMOND D'SEAN FRANKLIN'S Constitutional Rights – Defendants Jones, Burton, Knight, Hicks, the City of Columbia and the County Government of Boone County, Missouri

91. Plaintiff RAYMOND D'SEAN FRANKLIN hereby reincorporates and restates paragraphs 1 through 90 into this Count III as though fully set forth herein.

92. Defendants named in Count III by their acts and/or omissions did violate Plaintiff RAYMOND D'SEAN FRANKLIN's Constitutional right to be free from unreasonable searches and seizures and/or the security of his person as provided by the Second, Fourth, Sixth and/or Fourteenth Amendment of the United States Constitution.

93. Defendants named in Count III by their acts and/or omissions did violate Plaintiff RAYMOND D'SEAN FRANKLIN's Constitutional right to free speech and/or to petition the Government for the redress of grievances and retaliated against him for his exercise of same in violation of his rights.

94. Defendants named in Count III by their acts and/or omissions did violate Plaintiff RAYMOND D'SEAN FRANKLIN's Constitutional right to privacy and property and to keep and bear arms.

95. Each of the rights described above are clearly established Constitutional rights.

96. As a direct and proximate result of the actions of Defendants in violating the rights of the Plaintiff RAYMOND D'SEAN FRANKLIN suffered the previously-mentioned injuries and damages.

WHEREFORE, Plaintiff RAYMOND D'SEAN FRANKLIN prays this Court enter a judgment in his favor and against the Defendants named in Count III holding Defendants liable for the injuries and damages suffered

by Plaintiff. Plaintiff further prays that this Court order Defendants to pay Plaintiff such sums as to fully and completely compensate him for the injuries and damages he has suffered as previously outlined and for pre-judgment interest in an amount in excess of \$750,000.00. (Seven hundred and fifty thousand dollars) Plaintiff further prays that this Court order Defendants to pay punitive damages to Plaintiff as Defendants' conduct is outrageous and exhibits conscious disregard and reckless indifference for the rights and safety of others. Plaintiff further prays for an award of Attorney's fees as allowed by 42 U.S.C. Section 1988. Plaintiffs pray for all other relief that this Court deems reasonable and just.

Count IV – Violation of Plaintiff ROBERT FRANKLIN'S Constitutional Rights – Defendants Jones, Burton, Knight, Hicks, the City of Columbia and the County Government of Boone County, Missouri

97. Plaintiff ROBERT FRANKLIN hereby reincorporates and restates paragraphs 1 through 96 into this Count IV as though fully set forth herein.

98. Defendants named in Count IV by their acts and/or omissions did violate Plaintiff ROBERT FRANKLIN's Constitutional right to be free from wrongful seizure of his property as provided by Second and/or Fourth Amendment of the United States Constitution.

99. Defendants named in Count IV by their acts and/or omissions did violate Plaintiff ROBERT FRANKLIN's Constitutional right to be free from unreasonable seizures as provided by the Fourth Amendment of the United States Constitution.

100. Defendants named in Count IV by their acts and/or omissions did violate ROBERT FRANKLIN's Constitutional right to be free from unreasonable searches as provided by the Fourth Amendment of the United States Constitution and to keep and bear arms as provided by the Second Amendment of the United States Constitution.

101. Defendants named in Count IV by their acts and/or omissions did violate Plaintiff ROBERT FRANKLIN's Constitutional right to liberty and/or the due process and/or equal protection of law as provided by the Fifth and Fourteenth Amendments of the United States Constitution.

102. Defendants named in Count IV by their acts and/or omissions did violate Plaintiff ROBERT FRANKLIN's Constitutional right to privacy and property as provided by the Second and/or Fourth Amendments to the U.S. Constitution.

103. Each of the rights described above are clearly established Constitutional rights.

104. As a direct and proximate result of the actions of Defendants in violating the rights of the Plaintiff ROBERT FRANKLIN's, he suffered the previously-mentioned injuries and damages and additionally suffered these damages due to the conduct of defendants named above.

105. In addition, Plaintiff ROBERT FRANKLIN suffered loss of sleep and stress and anguish due to the emotional impact of the above named defendants' misconduct, and

WHEREFORE, Plaintiff prays this Court enter a judgment in his favor and against the Defendants named in Count IV holding Defendants liable for the injuries and damages suffered by Plaintiff. Plaintiff further prays that this Court order Defendants to pay Plaintiff such sums as to fully and completely compensate him for the injuries and damages he has suffered as previously outlined and for pre-judgment interest in excess of \$250,000.00. (Two hundred and fifty thousand dollars) Plaintiff further prays that this Court order Defendants to pay punitive damages to Plaintiff as Defendants' conduct is outrageous and exhibits conscious disregard and reckless indifference for the rights and safety of others. Plaintiff further prays for an award of Attorney's fees as allowed by 42 U.S.C. Section 1988. Plaintiff does pray for all other relief that this Court deems just.

Respectfully submitted,

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IN THE MISSOURI COURT OF APPEALS WESTERN DISTRICT

STATE OF MISSOURI,)	
)	
Appellant,)	WD74912
)	
vs.)	Opinion filed: February 5, 2013
)	
GREGORY ALLAN RODGERS,)	
)	
Respondent.)	

APPEAL FROM THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI The Honorable Deborah Daniels, Judge

Before Division Three: Alok Ahuja, Presiding Judge,
Victor C. Howard, Judge and Gary D. Witt, Judge

The State appeals the trial court's judgment granting defendant Gregory Allen Rodgers's motion to dismiss the charge against him for unlawful possession of a firearm in violation of section 571.070 RSMo. In the State's two points on appeal, it argues that the trial court erred in dismissing the charges because, (1) a valid conceal carry permit is not a defense to the crime of unlawful possession of a firearm in violation of section 571.070 where the defendant was a "fugitive from justice;" and (2) Rodgers was a "fugitive from justice" as a matter of law under the plain meaning of the term because he evaded law enforcement to avoid arrest for the charge pending against him for leaving the scene of a motor vehicle accident. The judgment is affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

On August 13, 2011, the Boone County prosecutor filed a complaint against Gregory Allen Rodgers, alleging that Rodgers had committed unlawful use of a weapon in violation of section 571.030.1(1).¹ The probable cause statement reflected that on August 12, 2011, Sergeant Geoff Jones, who was in plain clothes at the time, contacted Rodgers in person regarding a warrant for a municipal ordinance violation of leaving the scene of an accident. Officer Quintana and Officer Moroney were approaching in a marked patrol car. Upon seeing the patrol car, Rodgers took off running. Sergeant Jones identified himself as a police officer, and Rodgers took a gun that had been tucked into his waistband and concealed beneath his shirt and threw it on the ground. Rodgers then lay down on the ground and was taken into custody. Officers determined that Rodgers had a Missouri concealed carry endorsement that had expired October 20, 2007, and had a previous conviction from 2006 for possession of an illegal weapon. The probable cause statement also asserted that Rodgers knew that there was an active warrant for his arrest and ran from the police instead of immediately surrendering himself.

It was later determined that Rodgers had a Florida license to carry concealed weapons or concealed firearms, issued February 18, 2010, which was in good standing and would expire February 18, 2017, unless renewed. Based upon this license, Rodgers filed a motion to dismiss the charge against him.

The State filed a first amended complaint, charging Rodgers with violation of section 571.070 for unlawful possession of a firearm. The amended complaint alleged that on August 12, 2011, Rodgers knowingly possessed a Browning .9 mm Luger. It further alleged that on May 11, 2011, Rodgers had been involved in a traffic accident and was issued a summons for leaving the scene of a motor vehicle accident, that he had failed to appear on that summons, and a

¹ All statutory references are to RSMo Cum. Supp. 2011 unless otherwise indicated.

warrant was issued for his arrest by the municipal court of the City of Columbia, Missouri. The amended complaint also alleged that Rodgers was a fugitive from justice in that he had been charged with the commission of the crime of leaving the scene of an accident and was concealing himself for the purpose of avoiding arrest.

Rodgers filed a motion to dismiss the amended complaint, asserting that he was not a fugitive from justice. There was a hearing held on the motion during which Rodgers judicially admitted all facts in the amended complaint: that he knowingly possessed a Browning 9 mm Luger on May 11, 2011, he was involved in a traffic accident and was issued a summons upon which he failed to appear on July 18, 2011, and a warrant was issued and was outstanding at the time of his arrest.

Both the State and Rodgers filed suggestions regarding Rodgers's motion to dismiss. The trial court granted Rodgers's motion and dismissed the State's charge without prejudice, ruling that under section 571.101.2(4), a fugitive from justice must be charged with a misdemeanor with a punishment exceeding one year of imprisonment in order for his permit to carry a concealed weapon to be suspended. The court found that a failure to appear on a municipal ordinance violation was not sufficient to suspend Rodgers's permit to carry a concealed weapon. The court ruled that the failure to appear would be sufficient to submit Rodgers to felony punishment under section 571.070.

This appeal from the State follows.

ANALYSIS

In its two points on appeal, the State contends that the trial court erred in granting Rodgers's motion to dismiss because a valid conceal and carry permit is not a defense to the charge of unlawful possession of a firearm by a fugitive from justice under section 571.070, and

Rodgers was a fugitive from justice within the plain meaning of the term. Because the second point is dispositive, it is the only one we address.

Standard of Review

Generally, review of the trial court's ruling on a motion to dismiss is for an abuse of discretion. *State v. Clinch*, 335 S.W.3d 579, 583 (Mo. App. W.D. 2011). If the trial court's ruling is "clearly against the logic of the circumstances before the court and is so arbitrary and unreasonable as to shock the sense of justice and indicate a lack of careful consideration," an abuse of discretion has occurred. *Id.*

Where, as here, the facts are uncontested and the only issue is a matter of statutory construction, the trial court's dismissal of a felony complaint is subject to *de novo* review by the appellate court. *State v. Smothers*, 297 S.W.3d 626, 632 (Mo. App. W.D. 2009). "The interpretation of a statute is a pure question of law, and therefore we give the circuit court's interpretation no deference." *Id.*

Rodgers Was Not A Fugitive From Justice

Section 571.070.1 provides:

A person commits the crime of unlawful possession of a firearm if such person knowingly has any firearm in his or her possession and:

- (1) Such person has been convicted of a felony under the laws of this state, or of a crime under the laws of any state or of the United States which, if committed within this state, would be a felony; or
- (2) Such person is a *fugitive from justice*, is habitually in an intoxicated or drugged condition, or is currently adjudged mentally incompetent

(emphasis added).

The term "fugitive from justice" is not defined in section 571.070, nor in the remainder of that chapter, nor in the remainder of the Criminal Code. Additionally, no previous Missouri case

has defined the phrase in the context presented by this case. The trial court ruled that Rodgers's failure to appear in court for his municipal ordinance violation charge "would be sufficient to submit [him] to felony punishment under section 571.070," but under its additional reasoning based upon Missouri concealed carry law, it reached the conclusion that the charge pursuant to that section should be dismissed.

The State contends that "fugitive from justice" as used in section 571.070.1(2) should be given its plain and ordinary meaning in order to effectuate legislative intent, because the term is not defined within the statute nor anywhere in the Criminal Code. The State points two different definitions of "fugitive from justice" as indicating the term's plain meaning:

A person who, having committed a crime, flees from jurisdiction of court where crime committed or departs from his usual place of abode and conceals himself within the district.

Black's Law Dictionary 671 (6th Ed. 1990).

Someone who is sought by law officers; someone trying to elude justice.

<http://dictionary.reference.com/browse/fugitive+from+justice>;
http://lookwayup.com/lwu.exe/lwu/d?s=f&w=fugitive_from_justice;
<http://www.freedictionary.org/?Query=fugitive%20from%20justice>; all last accessed on July 11, 2012. (emphasis added).

The State argues that Rodgers fits the emphasized definition because:

Mr. Rodgers admitted that he was wanted on a summons for leaving the scene of a traffic accident, that he had failed to appear on the summons, and that a capias warrant had been issued for his arrest (LF 3). Mr. Rodgers was thus a fugitive from justice under the plain meaning of the term[.]

According to the State's briefing, the existence of an outstanding capias warrant alone makes Rodger's a "fugitive from justice." State's brief 20.

Rodgers, on the other hand, argues that the definition of "fugitive from justice" given in section 319.303(16), which, in relevant part, defines a "fugitive from justice" as "any person who

has fled from the jurisdiction,” must be applied to the term as used in section 571.070.1(2). Rodgers asserts that using this definition is the “clear statutory intent” of the legislature.

“The primary rule of statutory construction is to ascertain the intent of the legislature by construing words used in the statute in their plain and ordinary meaning unless the legislature has defined particular words or phrases.” *Short v. Southern Union Co.*, 372 S.W.3d 520, 532 (Mo. App. W.D. 2012). If a particular term is given a definition “within a statute,” the courts must effectuate the legislature’s definition. *Id.*

Section 319.303 is the definitions section of the “Missouri Blasting Safety Act,” which has a regulatory purpose of “foster[ing] the safe use of explosives in mining and construction by establishing and enforcing consistent statewide industry standards for licensing of blasters and persons using explosives.” Section 319.300. Section 571.070, on the other hand, is part of the Weapons Offenses chapter of the Criminal Code, the primary purposes of which are to define crimes and designate punishments for them. *See* § 556.031.1; *State v. Walker*, 352 S.W.3d 385, 391 (Mo. App. E.D. 2011). In sum, section 319.303 and section 571.070 are distinct sections in separate chapters governing unrelated subject matter, and thus the definition of a term from section 319.303(16) is not dispositive regarding the use of the term in section 571.070.1(2).

In support of Rodgers’s argument for application of the section 319.303(16) definition of “fugitive from justice” to the term as used in section 571.070.1(2), he cites cases that hold that “each part or section should be construed in connection with every other part or section so as to produce a harmonious whole,” *Phillips v. American Motorist Insurance Co.*, 996 S.W.2d 584, 588 (Mo. App. W.D. 1999), and that “it is proper to consider, not only acts passed at the same session of the legislature, ... but also acts passed at subsequent legislative sessions and, likewise

acts passed at subsequent legislative session[s].” *State ex rel. Jackson County v. Spradling*, 522 S.W.2d 788, 791 (Mo. banc 1975) (internal quotation omitted).

These holdings, however, are inapposite to application of the definition of “fugitive from justice” from section 319.303(16) to the term as used in section 571.070.1(2). The language from *Phillips* is in reference to “[a] statute,” as opposed to two distinct and widely separated statutes from different chapters, as in the instant case. The language from *Spradling* is in reference to acts relating to the same or closely related subject matter, whereas the instant case concerns sections involving unrelated subject matter.

We find the meaning of “fugitive from justice” as used in section 571.070.1(2) is ambiguous, and a proper analysis of the meaning of “fugitive from justice” as used in section 571.070.1(2) is elusive. Ambiguity exists if a term is reasonably susceptible to more than one meaning. *State v. Liberty*, 370 S.W.3d 537, 548 (Mo. banc 2012). Review of the law from the United States Code and from our sister states on unlawful possession of firearms by fugitives from justice, as well as the dictionary definition of the term, reveals the ambiguity of the term “fugitive from justice,” and the highly varied results reached by different entities analyzing it. For example, in the United States Code, in Chapter 44, governing firearms crimes, the term “fugitive from justice” means any person who has fled from any State to avoid prosecution for a crime or to avoid giving testimony in any criminal proceeding. 18 U.S.C.A. § 921 (2000).

The Supreme Court of Nevada invalidated the section of its statute prohibiting possession of a firearm by a “fugitive from justice” as unconstitutionally vague for its failure to define the term. *Gallegos v. State*, 163 P.3d 456, 459 (Nev. 2007). It is noteworthy that the dissenter in *Gallegos*, who argued that the statute was sufficiently definite to be constitutional, did so by arguing that the term “has a well-settled and ordinarily understood meaning,” namely “a person

who has (1) committed a crime in another state, (2) been charged in that state with the commission of such crime, and (3) fled from justice and is within this state.” *Id.* at 462 (dissenting opinion). Rodgers would not meet that “saving” definition.

An example of a state legislature’s attempt to articulate an unambiguous definition of “fugitive from justice” can be found in Delaware’s statute governing possession and purchase of deadly weapons by persons prohibited:

Any person who, knowing that he or she is the defendant or co-defendant in any criminal case in which that person is alleged to have **committed any felony** under the laws of this State, the United States or any other state or territory of the United States, becomes a fugitive from justice by failing to appear for any scheduled court proceeding pertaining to such felony for which proper notice was provided or attempted. It is no defense to a prosecution under this paragraph that the person did not receive notice of the scheduled court proceeding

Del. Code Ann. Tit. 11, § 1448(a)(8) (2012) (emphasis added).

Ohio is an example of a state, which, like Missouri, does not have an applicable statutory definition of “fugitive from justice” for its law against having weapons under disability. The Ohio appellate court attempted to fashion a common law definition in line with its perception of the legislature’s intent in *State v. Cherry*, 870 N.E.2d 808 (Ohio Ct. App. 2007). The court based its definition on that found in extradition law, and held that

in the absence of an arrest warrant, the broadest reach of the statute consistent with a strict construction in favor of the accused is that the alleged fugitive from justice must: (1) have incurred guilt—i.e., **be guilty** of having committed some offense; (2) **be aware** that he is being sought by police in connection with that offense; and (3) being aware that he is being sought by police, **take some affirmative action to elude detection** by police.

Cherry, 870 N.E.2d at 812 (emphasis added).

The current version of Black’s Law Dictionary states:

fugitive. (14c) 1. A person who flees or escapes; a refugee. 2. A criminal suspect or a witness in a criminal case who flees, evades, or escapes arrest, prosecution, imprisonment, service of process, or the giving of testimony, esp. by fleeing the

jurisdiction or by hiding. See 18 USCA § 1073. — Also termed (in sense 2) fugitive from justice.

741 (9th ed. 2009).

Clearly, there are many reasonable meanings of “fugitive from justice.” Where a criminal statute is ambiguous, as section 571.070.1(2) is, “the rule of lenity mandates that all ambiguity... be resolved in a defendant’s favor.” *Fainter v. State*, 174 S.W.3d 718, 721 (Mo. App. W.D. 2005). Under the rule of lenity, an ambiguous criminal statute is construed strictly against the government and liberally in favor of a defendant. *Id.* “Any doubt as to whether the act charged and proved is embraced within the prohibition must be resolved in favor of the accused.” *Id.* (internal quotation omitted). “The rule of lenity applies to interpretation of statutes only if, after seizing everything from which aid can be derived, we can make no more than a guess as to what the legislature intended.” *Id.* (internal citation omitted).

Application of the rule of lenity to the instant case requires that the ambiguity of “fugitive from justice” be strictly construed against the government and in favor of Rodgers. The state’s argument that Rodgers was a fugitive from justice because he “admitted that he was wanted on a summons for leaving the scene of a traffic accident, that he had failed to appear on the summons, and that a capias warrant had been issued for his arrest,” is too broad. These facts would not subject Rodgers to criminal prosecutions under any number of the ways the term has been defined. Being a “fugitive from justice” is an element of the crime alleged here. The elements of a crime should be well defined to provide meaningful notice of proscribed conduct. See *State v. Faruqi*, 344 S.W.3d 193, 200 (Mo. banc 2011). The fact that Rodgers was not a ‘fugitive from justice’ under multiple reasonable interpretations of the term is decisive in this appeal; we need not adopt a definitive definition of the term to decide this appeal. We respectfully suggest that,

to avoid future interpretive difficulties, the General Assembly may wish to consider adopting a precise definition of the term "fugitive from justice" for purposes of section 571.070.1(2).

Strictly construing the term "fugitive from justice" as used in section 571.070.1(2), we find that Rodger's alleged conduct is not encompassed by the statute. The State's second point on appeal is denied.

Because Rodgers was not a fugitive from justice as required for violation of section 571.070.1(2), the State's first point on appeal is moot and will not be addressed.

Conclusion

Rodgers was not a "fugitive from justice" as used in section 571.070.1(2). Therefore, the State's first and second points on appeal are denied and the judgment of the trial court is affirmed.


VICTOR C. HOWARD, JUDGE

All concur.